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Real Estate | Zoning | Business Law

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March 4, 2014

By E-Mail Submission

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001
bzasubmissions@dc.gov

RECEIVED
D.C. OFFICE OF PLANNING
2014 MAR -4 PM 3:00

Re: Opponent's Draft Findings of Fact and Conclusions of Law; BZA Application No. 18702, NW; 2303 14th St NW

Dear Chairman Jordan and Members of the Board:

Please find the attached draft Findings of Fact and Conclusions of Law filed on behalf of party opponent Concerned Residents and Neighbors of View 14.

Sincerely,



Martin P. Sullivan

Enclosure

cc: Office of Planning, Stephen Gyor
Leila Batties, Esq.
ANC 1B

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18702
EXHIBIT NO. 48

[PARTY OPPONENT'S DRAFT]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18702 of View 14 Investments LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow an animal boarding use under 11 DCMR § 735 in the C-2-B District at premises 2303 14th Street, N.W. (Square 2868, Lot 155).

HEARING DATE: February 4, 2014
DECISION DATE: March 11, 2014

Decision and Order

This self-certified application was submitted November 15, 2013 by View 14 Investments LLC and Citydog! Club (collectively, the “Applicant”). View 14 Investments LLC is the owner (the “Owner”) of the subject property. Citydog! Club is the proposed tenant for the subject premises, and the operator of the proposed animal boarding use. By letter dated January 17, 2014, from the Applicant’s counsel, the Applicant amended the Application to remove Citydog! Club as an applicant pending the selection of a new name for the proposed establishment.

The original application requested special exception relief for animal boarding use under § 735, special exception relief for a pet grooming establishment under § 736, special exception relief for an animal shelter use under § 739, and variance relief from subsections 736.4 and 739.5. By letter dated January 30, 2014, the Applicant amended the Application by withdrawing the request for special exception relief for an animal shelter use pursuant to 11 DCMR §739 and withdrawing its request for variance relief under 11 DCMR §736.4.

At the hearing on February 4, 2014, the Applicant further amended the Application by withdrawing the request for special exception relief for the pet grooming establishment (Transcript p. 119). Therefore, the only remaining relief requested is the special exception for the operation of an animal boarding use under § 735.

Following a public hearing on February 4, 2014, the Board of Zoning Adjustment (the “Board”) voted 4-0 on March 11, 2014 to deny the application.

PRELIMINARY MATTERS

BZA APPLICATION NO. 18702

PAGE NO. ____

Notice of Application and Notice of Public Hearing. By memoranda dated November 21, 2013, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation; the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1B, the ANC for the area within which the subject property is located; and the single-member district ANC 1B-04. Pursuant to 11 DCMR § 3112.14, on November 21, 2013 the Office of Zoning mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 1B. Notice was published in the *D.C. Register* on _____ (____ DCR ____).

Party Status. The Applicant and ANC 1B were automatically parties in this proceeding. The Board granted a request for party status in opposition to a group of four (4) residents from the second (2nd) floor of the View 14 apartment building in which the proposed use would be located, known as the Concerned Residents and Neighbors of View 14 (the "Concerned Residents").

Government Reports. By report dated January 28, 2014, and through testimony at the public hearing, OP recommended approval of the special exception request for animal boarding use under § 735, but could not recommend approval of the variances under §§ 736.4 and 739.5 and consequently could not recommend approval of the special exception requests under §§ 736.4 and 739.5.

ANC Report. ANC 1B did not submit a report in this case.

Persons in opposition. The Board received a letter of testimony from each of the four members of the Concerned Residents, and their counsel presented argument on their behalf at the hearing. Christina Parascandola, immediate past president of the Meridian Hill Neighborhood Association, testified at the hearing, and expressed concerns about the proposed use but did not officially take a position.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 2303 14th Street, NW, Square 2868, Lot 155.
2. The subject property is a roughly rectangular property containing approximately 31,279 square feet of land area.
3. The subject property is located in the C-2-B zone district pursuant to Zoning Commission Order No. 05-22 dated January 9, 2006 (the "PUD Order").
4. The subject property is currently improved a building built pursuant to the PUD Order consisting of about 32,000 square feet of commercial space on the first and below-grade levels, and 185 apartment units on floors two through nine.

5. The subject property is bordered by three streets and one public alley; with 14th Street to the west, Belmont Street to the north, Florida Avenue to the south, and a fifteen-foot (15 ft) wide alley to the east.

The Applicant's Project

6. The Applicant is proposing to operate an animal boarding use and a pet grooming establishment on the subject property.
7. The Applicant filed a report from its acoustic engineer which did not include a specific conclusion as to whether the proposed use would comply with § 735.3 requiring that the proposed use take place within a soundproof building.
8. The Applicant's acoustic engineer's report estimated the projected noise generated from dogs barking based on the "average noise level," rather than the upper limit of the *actual* projected noise level.
9. The acoustic engineer first testified on cross examination that the first floor premises would be sound-proof, but later testified that the noise level emanating from that space would merely be at or near the level of the ambient noise existing on the second floor of the View 14 apartment building, and that it would sometimes exceed that amount, albeit rarely.
10. The subject property abuts a residential zone district (R-5-A) to the west, across the public alley.
11. The Applicant failed to show that the proposed use did not abut the residential zone to the east, across the public alley.

CONCLUSIONS OF LAW

The Applicant requests special exception relief to allow use of property for animal boarding pursuant to § 735, in the C-2-B Zone District at 2303 14th Street, N.W. (Square 2868, Lot 155). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. See 11 DCMR § 3104.1.

Pursuant to § 735, an animal boarding use may be permitted as a special exception if approved by the Board subject to certain requirements, including that the animal boarding use must not abut a Residence zone (§ 735.2). The use must take place entirely within an enclosed and

BZA APPLICATION NO. 18702

PAGE NO.

soundproof building in such a way so as to produce no noise or odor objectionable to nearby properties, with windows and doors kept closed and no animals permitted in an external yard on the premises (§ 735.3). The operator of the animal boarding use must place all animal waste in closed waste disposal containers and utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly, and must control odors by means of an effective air filtration system, such as high efficiency particulate air ("HEPA") filtration or the equivalent (§ 735.4). External yards and other exterior facilities for the keeping of animals are not permitted (§ 735.6)

The Board concludes that the Application has not satisfied the requirements necessary for special exception relief, as follows:

The property abuts a residence zone to the east, across a 15-foot wide alley. The Board concludes that such a situation means that the Application does not comply with the special exception requirement under § 735.2. The Applicant did not request variance relief from this requirement. Therefore, the Application does not meet the § 735 special exception requirements and the Application must be denied. The Board finds that the proposed use abuts the residential zone regardless of whether or not there is a space used by another tenant between the animal boarding use and the alley. To find so would mean that any similiarly-situated application could avoid the abutting restriction simply by providing a one-foot "dead" space between the animal boarding use and the rear of its building. While the subject premises may not be located at the rear of the building, animal boarding use, in general, involves not only the use of the specific premises, but also ingress and egress for dogs, disposal of waste products using other portions of a building and exterior space, and other functions by which the proposed use has an effect on surrounding properties, regardless of where it sits exactly within its building. Therefore, having the premises in one part of the property does not change the Board's conclusion that this proposed use abuts the residential zone across the alley to the east.

Furthermore, the Applicant did not meet its burden of proof to show that the proposed use would be within a soundproof building. In fact, the Applicant's expert admitted on cross-examination that residents of the residential units on the second floor can expect to occasionally hear noise from barking dogs. Also, while the Applicant performed tests measuring the sound level of fifty (50) dogs, the Applicant would not commit to a population limit of fifty dogs. In fact, the Applicant would not commit to any upper limit on the number of dogs, making the results of the fifty- (50) dog study somewhat irrelevant for a proposal that promises no limit whatsoever; i.e., a study assuming only fifty dogs gives no assurance that noise from 75, 100, or 150 dogs would not be objectionable.

The Office of Planning recommended approval of the Application. The Board, however, disagrees with the Office of Planning's position on whether or not the property abuts a residence zone, as well as OP's position on what might be termed objectionable as far as noise from the proposed facility.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **DENIED**.

BZA APPLICATION NO. 18702

PAGE NO. ____

VOTE: 4-0 (Lloyd Jordan, S. Kathryn Allen, Jeffrey Hinkle, and Peter May to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____

FINAL DATE OF ORDER: _____